

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PALMER/KANE LLC,

Plaintiff,

v.

JOHN WILEY & SONS, INC.,

Defendant.

14 CV 7994

Case No: _____

COMPLAINT

DEMAND FOR
JURY TRIAL

DET 9/3/2014

U.S.D.C. S.D.N.Y.

Plaintiff, Palmer/Kane LLC, by and through its undersigned counsel, for its Complaint against Defendant John Wiley & Sons, Inc., alleges as follows:

JURISDICTION AND VENUE

1. This is an action for copyright infringement by reason of Defendant's infringing uses of Plaintiff's copyrighted photographs.
2. This Court possesses subject matter jurisdiction over this action pursuant to the provisions of 28 U.S.C. Sections 1331 and 1338(a), because this action arises under the Copyright Act of 1976, 17 U.S.C. Sections 101 et seq.
3. This Court possesses general personal jurisdiction over Defendant John Wiley & Sons, Inc., pursuant to N.Y. C.P.L.R. § 301, because Defendant John Wiley & Sons, Inc. is engaged in such a continuous and systematic course of "doing business" in New York as to warrant finding it "present" in the jurisdiction. In addition, this Court possesses personal jurisdiction over Defendant John Wiley & Sons, Inc., pursuant to N.Y. C.P.L.R. § 302(a)(1), because Defendant John Wiley & Sons, Inc. transact business within this state, including in this judicial district, and contracts to supply goods or

services in the state, including in this judicial district. On information and belief, Defendant John Wiley & Sons, Inc. sells and distributes its publications via employees and agents in New York and throughout the United States, including publications that are at issue in this action, in which Palmer/Kane's photographs are unlawfully reproduced. Further, Defendant John Wiley & Sons, Inc. is incorporated in New York.

4. Venue is proper in this District under 28 U.S.C. Sections 1391(a) and (b) and 1400(a), since Defendant resides or may be found in this District and a substantial portion of the misconduct by Defendant here alleged occurred in this District.

THE PARTIES

5. Gabe Palmer, a resident of the State of Connecticut, is a professional photographer who makes his living taking and licensing photographs.

6. The Plaintiff, Palmer/Kane LLC, is a Vermont limited liability corporation with a place of business at 77 Soundridge Road, Shelton, Connecticut 06484.

7. Gabe Palmer created the photographs herein alleged as works-made-for-hire for Plaintiff or its predecessor, Palmer/Kane, Inc. (collectively "Palmer/Kane").

8. Palmer/Kane is a stock photography production company that produces commercial imagery licensed through agencies such as Corbis Corporation ("Corbis"), Getty Images, Inc. ("Getty Images") and Alamy Ltd. ("Alamy") and occasionally directly to the end user. Palmer/Kane has been in business for 38 years. Over the last 20 years, Palmer/Kane has issued, through its agents, over 5,000 licenses for book use through The Stock Market ("TSM") and Corbis, many of them to Defendant John Wiley & Sons, Inc.

9. All Palmer/Kane images represented by Corbis, its predecessor TSM, Getty Images, and the majority of images represented by Alamy are licensed under the

rights management (“RM”) model. RM license fees are calculated based on the specific media in which the image will appear and the exposure the image will have. Factoring the fee requires consideration of industry, media, image size, frequency, image placement, languages, geographic distribution, press run, and start/expiration dates. The licensing agency’s price calculator constitutes a good indicator of the breadth and depth of licensed use.

10. Palmer/Kane is the owner of the copyrights in and to each of the photographs of Gabe Palmer as to which a claim of copyright infringement is asserted in this Complaint.

11. Defendant John Wiley & Sons, Inc. (“Wiley”) is a New York corporation with its principal place of business at 111 River Street, Hoboken, New Jersey 07030.

12. Wiley is a publishing company in the business of creating and publishing educational textbooks, instructional technology materials, reference works, and other similar materials and publications.

13. Wiley publishes through various imprints and divisions including, but not limited to, Wiley-Blackwell, IDG Books Worldwide, Inc. and a variety of imprints and divisions around the world.

FACTS

14. Palmer/Kane is the copyright owner of all images produced by Gabe Palmer as works for hire, and bearing the credit Gabe Palmer, Palmer Kane, or the brand name “Mug Shots” or (sic) “Mugshots.” This includes the photographs of Gabe Palmer that are named, depicted and described in Exhibit A hereto.

15. Palmer/Kane LLC acquired the rights to all Palmer/Kane Inc. copyright registrations by written agreement.

16. As more fully set forth below, all of the Palmer/Kane images at issue in this Complaint have been registered with the U.S. Copyright Office. This includes each of the photographs in Exhibit A, which are registered with the U.S. Copyright Office under a certificate bearing the registration number stated in Exhibit A as to that photograph. The Palmer/Kane images at issue in this Complaint were registered with the Copyright Office as follows:

Image No.	Name	Registration No. (Date)
01	“Business Execs Toasting Success”	VAu 529-623 (June 25, 2001)
02	“Man Paying Bills”	VA 1-812-355 (April 27, 2012)
03	“Boy Laying on Dock”	VA 1-850-300 (February 24, 2013)
04	“Calling on Student in Spanish Class”	VA 1-823-811 (May 3, 2012)
05	“Students Working Together”	VA 1-823-811 (May 3, 2012)
06	“Two Boys Looking at Globe”	VA 1-811-724 (October 12, 2011)
07	“Teaching American Sign Language”	VAu 529-623 (June 25, 2001)
08	“Handicapped Student Raising Hand”	VAu 529-623 (June 25, 2001)
09	“Father and Daughter Fixing Car”	VA 1-297-358 (February 2, 2002)
10	“Bucket Boy” aka “Fun in the Water”	VA 1-297-358 (February 2, 2002)
11	“Teenaged Boy with Therapist”	VA 1-812-350 (April 27, 2012)
12	“Aerial of Suburban Tract”	VA 1-850-706 (February 21, 2013)
13	“Auto Mechanic and Customer”	VA 1-812-344 (April 27, 2012)
14	“Executive at Desk”	VAu 529-623

		(June 25, 2001)
15	“Cheating”	VAu 529-623 (June 25, 2001)
16	“Pianist’s Hands”	VA 1-816-720 (January 18, 2012)
17	“Family Playing with Toys”	VAu 529-623 (June 25, 2001)
18	“Ump and Player Arguing”	VA 1-297-358 (February 2, 2002)
19	“Speeding Ambulance”	VAu 529-623 (June 25, 2001)

Copyright Infringement by Wiley

17. Wiley published, used and continues to use each of the photographs in Exhibit A, below, in the publications listed as to each such photograph, each of which publications was on sale as of the date of filing of this Complaint, and, on information and belief, for at least three years prior thereto. Each of such uses has been and continues to be unlicensed or beyond the scope of any license. Accordingly, under the separate-accrual rule applicable to copyright infringement claims, each of Wiley’s unlicensed uses of Palmer/Kane’s photographs within the last three years constitutes a separate infringement. Palmer/Kane is seeking recovery of damages for infringements occurring within three years of the filing of the lawsuit.

18. To the extent that any of such uses was ever licensed, such license has expired or its terms and conditions have been exceeded or otherwise violated. Facts known to Palmer/Kane regarding the specific license (or absence thereof) as to each photograph contained in Exhibit A, below, as well as the scope of use of each photograph, are set forth below.

Wiley's Unlicensed Use of Palmer/Kane Images/Photographs

19. Exhibit A contains Palmer/Kane's images/photographs appearing in Wiley books and publications in Palmer/Kane's possession and for which no evidence of a license exists. In some cases, the image/photograph was never licensed to any component of Wiley; in other cases the image was licensed many years earlier and the license expired; and in still other cases, the limited scope of any licenses that were issued have been grossly exceeded.

20. The photograph entitled "Business Execs Toasting Success" shown in Exhibit A as photograph 01 was registered under Certificate of Registration No. VAu 529-623. It appears in two insertions in each of the Wiley publications "¡Con Brio!" 2e and 3e, published in multiple formats including but not limited to e-book, WileyPLUS, Wiley Custom Select, and CourseSmart digital rental. Editions 2e and 3e of this publication are available for purchase on the Wiley website, www.wiley.com. Wiley's continuing use of Palmer/Kane's photograph in this publication is unlicensed and therefore infringing.

21. The photograph entitled "Man Paying Bills" shown in Exhibit A as photograph 02 was registered under Certificate of Registration No. VA 1-812-355. It appears on the cover of the IDG Books publication "The Unofficial Guide to Beating Debt" which is available for purchase on the website www.unofficialguides.com. The website page advertising the publication includes the following copyright notice: "Copyright © 2000-2005 John Wiley & Sons, Inc. or related companies." This image was never licensed to Wiley for any purpose whatsoever, nor to Wiley's predecessor in

interest for use in this publication. Wiley's continuing use of Palmer/Kane's photograph in this publication is unlicensed and therefore infringing.

22. The photograph entitled "Boy Laying on Dock" shown in Exhibit A as photograph 03 was registered under Certificate of Registration No. VA 1-850-300. It appears in the Frommer's publication "Florida with Your Family," 2e, published simultaneously in the US, the UK and Canada and currently available for purchase from the Frommer's website. Until August 2012, Frommer's was a division or imprint of Wiley. Accordingly, use of the identified copyrighted Palmer/Kane photograph in the referenced Frommer's publication between September 2011 and August 2012 is attributable to Wiley. Wiley's use of Palmer/Kane's photograph in this publication from September 2011 through August 2012 is unlicensed and therefore infringing.

23. The photograph entitled "Calling on Student in Spanish Class" shown in Exhibit A as photograph 04 was registered under Certificate of Registration No. VA 1-823-811; and the photograph entitled "Students Working Together" shown in Exhibit A as photograph 05 was registered under Certificate of Registration No. VA 1-823-811. They appear in the Wiley publications "Because Teaching Matters," 1e and 2e, published in multiple formats including but not limited to e-book, companion website, Wiley Custom Select, and CourseSmart digital rental. Edition 2e of this publication is available for purchase on the Wiley website www.wiley.com. Wiley's continuing use of Palmer/Kane's photographs in this publication is unlicensed and therefore infringing.

24. The photograph entitled "Two Boys Looking at Globe" shown in Exhibit A as photograph 06 was registered under Certificate of Registration No. VA 1-811-724. It appears in five insertions in the Wiley publication "Visualizing Elementary Social

Studies Methods.” The first edition of this publication is available for purchase on the Wiley website www.wiley.com. Wiley’s continuing use of Palmer/Kane’s photograph in this publication is unlicensed and therefore infringing.

25. The photograph entitled “Teaching American Sign Language” shown in Exhibit A as photograph 07 was registered under Certificate of Registration No. VAu 529-623; and the photograph entitled “Handicapped Student Raising Hand” shown in Exhibit A as photograph 08 was registered under Certificate of Registration No. VAu 529-623. They appear in the Wiley-Blackwell publication “Introduction to Inclusive Education, Modules 1 – 5,” which is advertised on the Wiley website, www.wiley.com. Wiley’s continuing uses of Palmer/Kane’s photographs in this publication are unlicensed and therefore infringing.

26. The photograph entitled “Father and Daughter Fixing Car” shown in Exhibit A as photograph 09 was registered under Certificate of Registration No. VA 1-297-358. The photograph entitled “Bucket Boy,” also known as “Fun in the Water,” shown in Exhibit A as photograph 10 was registered under Certificate of Registration No. VA 1-297-358. They appear in the Wiley publication “Education Research: A Contextual Approach.” This publication is available for purchase on the Wiley website www.wiley.com. Wiley’s continuing use of Palmer/Kane’s photographs in this publication is unlicensed and therefore infringing.

27. The photograph entitled “Teenaged Boy with Therapist” shown in Exhibit A as photograph 11 was registered under Certificate of Registration No. VA 1-812-350. It appears in the Wiley publication “Understanding Abnormal Child Psychology,” 2e. This publication is available for purchase from the Wiley website www.wiley.com.

Wiley's continuing use of Palmer/Kane's photograph in this publication is unlicensed and therefore infringing.

28. The photograph entitled "Aerial of Suburban Tract" shown in Exhibit A as photograph 12 was registered under Certificate of Registration No. VA 1-850-706. It appears in the Wiley Publication "Landscape Planning: Environmental Applications," 5e. This publication is available for purchase on the Wiley website www.wiley.com. The Palmer/Kane image was licensed on May 5, 2010 for 100,000 copies. That license expired in May 2013. Wiley's continuing use of Palmer/Kane's photograph in this publication is unlicensed and therefore infringing.

29. The photograph entitled "Auto Mechanic and Customer" shown on Exhibit A as photograph 13 was registered under Certificate of Registration No. VA 1-812-344; the photograph entitled "Executive at Desk" shown on Exhibit A as photograph 14 was registered under Certificate of Registration No. VAu 529-623; the photograph entitled "Cheating" shown on Exhibit A as photograph 15 was registered under Certificate of Registration No. VAu 529-623. They appear in the Wiley publication "Psychology: Brain, Behavior & Culture," aka "Psychology," 3e. Wiley provides an Instructor Companion Site for this edition, at <http://bcs.wiley.com/he-bcs/Books?action=index&bcsId=1421&itemId=0471387541>. Instructors are able to browse the publication by chapter, among other activities. Wiley's continuing uses of Palmer/Kane's photographs in these publications are unlicensed and therefore infringing.

30. The photograph entitled "Pianist's Hands" shown on Exhibit A as photograph 16 was registered under Certificate of Registration No. VA 1-816-720. It, along with the photograph entitled "Executive at Desk." shown on Exhibit A as

photograph 14, appears in the 6e edition of the Wiley publication “Psychology,” which is available for purchase from Wiley’s website, www.wiley.com. Wiley’s continuing use of Palmer/Kane’s photographs in this publication is unlicensed and therefore infringing.

31. The photograph entitled “Family Playing with Toys” shown in Exhibit A as photograph 17 was registered under Certificate of Registration No. VAu 529-623. It appears in the Wiley publications “Psychology in Action” 5e, 6e, 7e, 8e, 9e, “Psychology in Action Active Learning” 7e, and “Visualizing Psychology” 1e, 2e, 3e. Editions 2e and 3e of “Visualizing Psychology” are available for purchase from the Wiley website www.wiley.com. Edition 9e of “Psychology in Action” is available for purchase from the WileyPlus website at <https://www.wileyplus.com/WileyCDA/Section/Psychology-in-Action-9th-Edition.id-402985.html>. In addition, Wiley provides a Student Companion Site for the 7e edition of the publication “Psychology in Action,” at <http://bcs.wiley.com/he-bcs/Books?action=index&itemId=0471263265&itemTypeId=BKS&bcsId=1605>. Students are able to browse the publication by chapter, among other activities. Wiley’s continuing uses of Palmer/Kane’s photograph in these publications are unlicensed and therefore infringing.

32. The photograph entitled “Ump and Player Arguing” shown on Exhibit A as photograph 18 was registered under Certificate of Registration No. VA 1-297-358. It appears in the Wiley publication “Psychology Around Us,” 1e. This publication is available for purchase from the WileyPlus website at <https://www.wileyplus.com/WileyCDA/Section/Psychology-Around-Us.id-402982.html>.

Wiley's continuing use of Palmer/Kane's photograph in this publication is unlicensed and therefore infringing.

33. The photograph entitled "Speeding Ambulance" shown in Exhibit A as photograph 19 was registered under Certificate of Registration No. VAu 529-623. It appears in the Wiley publication "Essentials of Physics," 1e. Wiley provides a Student Companion Site for this edition of the publication "Essentials of Physics," at <http://bcs.wiley.com/he-bcs/Books?action=index&itemId=0471713988&itemTypeId=BKS&bcsId=2289>. Students are able to browse the publication by chapter, among other activities. Wiley's continuing uses of Palmer/Kane's photograph in this publication are unlicensed and therefore infringing.

COUNT I

(COPYRIGHT INFRINGEMENT)

34. Palmer/Kane repeats and re-alleges each allegation set forth above in paragraphs 1-33.

35. Palmer/Kane is the sole proprietor of all rights, title and interest in and to the copyright of each of the photographs described and alleged above and in Exhibit A that have been registered with the United States Office of Copyright pursuant to 17 U.S.C.A. § 411(a).

36. Each of said photographs contains material wholly original with Palmer/Kane and is copyrightable subject matter under the laws of the United States.

37. Wiley has infringed, and continues to infringe, Palmer/Kane's copyrights, in violation of the Copyright Act, 17 U.S.C. §101 et seq., by knowingly and willfully publishing said photographs without the consent or authorization of Palmer/Kane.

38. Wiley's infringements were and are intentional, willful, reckless and/or malicious.

39. Wiley's unauthorized and infringing conduct caused Palmer/Kane significant injuries, damages, and losses in amounts to be determined at trial.

40. Palmer/Kane seeks all damages recoverable under any applicable agreements and/or the Copyright Act, including statutory or actual damages and Wiley's profits attributable to the infringing use of Palmer/Kane's creative works and the damages suffered as a result of the lack of compensation, credit and attribution. Palmer/Kane also seeks all attorneys' fees and any other costs incurred in connection with this lawsuit.

41. As a result of the above alleged infringements, Palmer/Kane has suffered and continues to suffer irreparable harm for which damages may be insufficient.

JURY TRIAL DEMAND

42. Pursuant to Fed. R. Civ. P. 38, Palmer/Kane hereby demands a trial by jury of all issues so triable in this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Palmer/Kane requests that this Court enter judgment in its favor and providing the following relief:

- A. Entry of a preliminary and permanent injunction against Wiley and anyone working in concert with Wiley from copying, displaying, distributing, advertising, promoting, selling or offering to sell Palmer/Kane's photographs, or creating, obtaining, and using substantially similar photographs, and requiring Wiley to deliver to the Court for destruction or other appropriate disposition all materials representing Palmer/Kane's photographs, including digital files representing Palmer/Kane's photographs, in the control or possession of Wiley;
- B. An award to Palmer/Kane of all damages allowable under the Copyright Act, including, but not limited to, statutory and/or actual damages, including damages incurred as a result of Palmer/Kane's loss of licensing revenue, and Wiley's profits attributable to the above-alleged infringements, as well as damages suffered by Palmer/Kane as a result of the lack of credit and attribution;
- C. An award of Palmer/Kane's full costs, including litigation expenses, expert witness fees, interest, and any other amounts authorized by law, and attorneys' fees incurred in connection with this lawsuit;

- D. An award of punitive and/or exemplary damages and any other relief authorized by law; and
- E. Such other and further relief as this Court deems just and proper.

Dated: October 3, 2014

Respectfully submitted:

PALMER/KANE LLC,
By its attorneys,


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